

## **MINUTES**

### **MONTANA SENATE 59th LEGISLATURE - REGULAR SESSION**

#### **COMMITTEE ON LOCAL GOVERNMENT**

**Call to Order:** By **SEN. KELLY GEBHARDT**, on March 15, 2005 at 3:18 P.M., in Room 335 Capitol.

#### **ROLL CALL**

**Members Present:**

Sen. Jeff Mangan, Chairman (D)  
Sen. John Esp (R)  
Sen. Kelly Gebhardt (R)  
Sen. Kim Gillan (D)  
Sen. Bob Hawks (D)  
Sen. Rick Laible (R)  
Sen. Lynda Moss (D)  
Sen. Jerry O'Neil (R)  
Sen. Jim Shockley (R)  
Sen. Carolyn Squires (D)  
Sen. Mike Wheat (D)

**Members Excused:** None.

**Members Absent:** None.

**Staff Present:** Jennifer Kirby, Committee Secretary  
Leanne Kurtz, Legislative Branch

**Please Note.** These are summary minutes. Testimony and discussion are paraphrased and condensed.

**Committee Business Summary:**

Hearing & Date Posted: HB 103, 3/4/2005; HB 234,  
2/23/2005; HB 283, 2/23/2005; HB  
321, 2/23/2005  
Executive Action: HB 103; HB 234; HB 283; HB 321; HB  
371; HB 220; HB 105

**HEARING ON HB 103**

***{Tape: 1; Side: A; Approx. Time Counter: 0.2}***

**Opening Statement by Sponsor:**

**REP. ROBYN DRISCOLL (D), HD 51**, opened the hearing on **HB 103**, Require notice to attorney general for appealed city attorney criminal case.

***{Tape: 1; Side: A; Approx. Time Counter: 0.2 - 2.1}***

**REP. DRISCOLL** noted that her bill was brought at the request of the Department of Justice. She explained that the bill required city attorneys to notify the Attorney General of any criminal appeals. She stated that it would allow the bureau to give a better and quicker response to any appellate issues.

**Proponents' Testimony:**

***{Tape: 1; Side: A; Approx. Time Counter: 2.1 - 4.2}***

**Pam Bucy, Montana Attorney General's Office**, called **HB 103** a good government bill. She told the committee that the city attorneys had approved the bill. She noted that the Attorney General's office offered to help with any appeals. **Ms. Bucy** said that most of the problems arise with DUI (Driving Under the Influence) law because it changes so fast. **Ms. Bucy** handed out an informational sheet.

**EXHIBIT**(los57a01)

**Alec Hansen, League of Cities and Towns**, said the bill made a lot of sense.

**Opponents' Testimony:** None.

**Informational Testimony:** None.

**Questions from Committee Members and Responses:**

***{Tape: 1; Side: A; Approx. Time Counter: 4.2 - 5.4}***

**SEN. JIM SHOCKLEY, SD 45, VICTOR**, asked **Ms. Bucy** if the bill would require city attorneys to send notice for an appeal to district court. **Ms. Bucy** clarified that the bill only required notice for cases appealing to the Montana Supreme Court.

**Closing by Sponsor:**

***{Tape: 1; Side: A; Approx. Time Counter: 5.4 - 5.7}***

REP. DRISCOLL thanked the committee and asked them to concur on HB 103.

**HEARING ON HB 234**

***{Tape: 1; Side: A; Approx. Time Counter: 5.8}***

**Opening Statement by Sponsor:**

REP. MICHAEL LANGE (R), HD 55, opened the hearing on HB 234, Protect privacy of veterans discharge records.

***{Tape: 1; Side: A; Approx. Time Counter: 5.8 - 7.4}***

REP. LANGE reminded the committee of a bill from last session that guaranteed the privacy of a veteran's discharge records. HB 234 amends that law. REP. LANGE told the committee that he had met a World War II veteran who had a problem with the law. The veteran had tried to get his original discharge paper back from the Clerk and Recorder's Office and the clerk would not give it back because the law required the office to file the document. REP. LANGE wanted to ensure that veterans or their families were able to get the original certificates back.

**Proponents' Testimony:**

***{Tape: 1; Side: A; Approx. Time Counter: 7.4 - 10.1}***

Robert Throssell, Montana Association of Clerks and Recorders, explained that the word "file" was used incorrectly in the law. "File" directs the clerk to retain the original document into perpetuity. Mr. Throssell said that the correct term would be "record," which directs the clerk to keep a copy of the document. Mr. Throssell stated that HB 234 laid out a good roadmap for both the clerk and the veteran. He said that HB 234 would allow veterans to get back their original discharge papers and prevent the problem from occurring in the future.

Col. Jim Jacobson, Legislative Chairman of the American Legion, supported the bill and said that it did a great service for veterans.

**Opponents' Testimony:** None.

**Informational Testimony:** None.

**Questions from Committee Members and Responses:**

***{Tape: 1; Side: A; Approx. Time Counter: 10.1 - 17.3}***

**SEN. SHOCKLEY** asked the sponsor if the bill referred to a DD 214 or a discharge certificate. **REP. LANGE** answered that in this case he was talking about a DD 253 because in World War II, they did not have DD 214. **SEN. SHOCKLEY** explained that a DD 214 had all the information on it and wanted to know if that is what the bill should refer to. **REP. LANGE** explained that the bill was aimed at ensuring that the original forms were returned to veterans.

**SEN. JERRY O'NEIL, SD 3, COLUMBIA FALLS,** wanted to know if the procedure would be to make a copy of the discharge certificate and retain the copy. **REP. LANGE** deferred to **Mr. Throssell**. **Mr. Throssell** explained the recording process and said that some counties had switched to digital recording while others continued to use microfilm. He noted that the process was laid out in Title 7.

**SEN. RICK LAIBLE, SD 44, VICTOR,** questioned **Mr. Throssell** as to the purpose of recording a veteran's discharge papers. **Mr. Throssell** explained that the military directs discharge veterans to have their papers recorded because veterans' benefits require the original certificate or a certified copy. If a veteran lost the original, they could get a certified copy from the Clerk and Recorder's Office. **SEN. LAIBLE** asked whether anyone could have important papers recorded. **Mr. Throssell** replied that it was a little-known fact but citizens could have any document recorded. He said the problem with that is the document becomes public record and the owner has no expectation of privacy, very few things, like veteran's records, were recorded and privacy maintained by statute. He noted that the clerk may refuse some things but most things could be recorded for seven dollars.

**SEN. SHOCKLEY** asked if it was seven dollars a page or seven dollars a document. **Mr. Throssell** answered that it was seven dollars a page.

**Closing by Sponsor:**

***{Tape: 1; Side: A; Approx. Time Counter: 17.3 - 19.1}***

**REP. LANGE** informed the committee that the military tells veterans to record their discharge certificates and many veterans did not realize that the clerks did not need the original document. He surmised that the clerk and recorder's offices had a lot of originals and that veterans and their families would want them back. He noted that discharge papers were a highly emotional document and had extraordinary sentimental value.

#### HEARING ON HB 283

*{Tape: 1; Side: A; Approx. Time Counter: 19.4}*

#### Opening Statement by Sponsor:

**REP. MIKE JOPEK (D), HD 4**, opened the hearing on **HB 283**, Revise local firefighter disability and pension funding.

*{Tape: 1; Side: A; Approx. Time Counter: 19.5 - 23.5}*

**REP. JOPEK** told the committee that **HB 283** had passed unanimously out of both the House committee and the House floor. **HB 283** changes how the Volunteer Fire Pension and Disability Fund is funded. Currently, the funds are maintained by a percentage formula: at least (.12) percent but not more than (.15) percent of the county's tax rolls. **REP. JOPEK** said that the problem is that some counties are growing so rapidly, the percentage formula sets aside too much money. **REP. JOPEK** gave the example of the city of Whitefish, which, in order to meet the percentage formula, would have to levy an additional \$692,000 despite the fact that the Pension and Disability Fund already has a more than adequate amount of money. **REP. JOPEK** handed out a letter from the city of Whitefish.

#### EXHIBIT(1os57a02)

**REP. JOPEK's** bill would allow communities to base the funding of the Volunteer Fire Pension and Disability Fund on either the percentage formula or actuarial valuation. It mandated the funding be sound but allowed more flexibility for communities.

#### Proponents' Testimony:

*{Tape: 1; Side: A; Approx. Time Counter: 23.5 - 27}*

**Alec Hansen, Montana League of Cities and Towns**, supported the bill. **Mr. Hansen** declared that the bill would not just help the city of Whitefish, but also help the cities of Hamilton, Stevensville, Colstrip, and Red Lodge. **Mr. Hansen** stated that in

some cases, the percentage formula raised more money than the cities need to have an actuarial sound Volunteer Fire Pension and Disability Fund. **Mr. Hansen** noted that those cities would have to levy a huge amount of money to satisfy the statute. **Mr. Hansen** compared the current situation to a previous levy for local government study commissions. In that situation, one city's mill raised \$400,000, that study commission could afford to go to the London School of Economics if they had wanted to. In another city, the mill raised \$86 and one of the study commissioners was on his way to Bozeman, he stopped in Havre and ran out of money. **Mr. Hansen** concluded that one-size-fits-all formulas do not work.

**Opponents' Testimony:** None.

**Informational Testimony:** None.

**Questions from Committee Members and Responses:**

***{Tape: 1; Side: A; Approx. Time Counter: 27 - 27.9}***

**SEN. JEFF MANGAN, SD 12, GREAT FALLS**, said that it sounded like the local resort tax was working well for the city of Whitefish.

**REP. JOPEK** agreed that the local resort tax was helping the community.

**Closing by Sponsor:**

***{Tape: 1; Side: A; Approx. Time Counter: 27.9 - 28.4}***

**REP. JOPEK** asked the committee to concur on **HB 283** and if the bill got out of committee, he wanted **SEN. DAN WEINBERG, SD 2, WHITEFISH**, to carry the bill on the Senate floor.

**HEARING ON HB 321**

***{Tape: 1; Side: A; Approx. Time Counter: 28.5}***

**Opening Statement by Sponsor:**

**REP. TOM FACEY (D), HD 95**, opened the hearing on **HB 321**, Park District revenue for land acquisition.

***{Tape: 1; Side: A; Approx. Time Counter: 28.5 - 29.6}***

**REP. FACEY** stated that **HB 321** helped improve flexibility and accountability for county park districts. He directed the committee to line 23, which allowed county park commissions to acquire land. He noted that in order to acquire land, the

districts must have the approval of the county commissioners. **REP. FACEY** said that the districts could acquire land through donation or devices. **REP. FACEY** explained that county park districts are responsible for administering, maintaining, and improving their parks but the districts are not permitted to own the parks.

**Proponents' Testimony:**

*{Tape: 1; Side: A; Approx. Time Counter: 29.7 - 30.5}*

**Gordon Morris, Montana Association of Counties**, stood in support of **HB 321**. He noted that the districts must have concurrence from the county commissioners in order to acquire land. **Mr. Morris** said that the bill would provide more flexibility to the park districts.

**Opponents' Testimony:** None.

**Informational Testimony:** None.

**Questions from Committee Members and Responses:**

*{Tape: 1; Side: B; Comments: Technical difficulties with the tape recorder. The meeting was not recorded for approximately 20 minutes. The audio record resumes on Tape 2; Side A}*

**SEN. LAIBLE** asked the sponsor how the park districts work currently. **REP. FACEY** responded that the county commissioners own the title and the park districts maintain the parks. **SEN. LAIBLE** wanted to know how they acquired land. **REP. FACEY** referred the question to **Mr. Morris**. **Mr. Morris** said that park districts could not accept land at all. **Mr. Morris** went over how **HB 321** would change the system. He directed the committee to page 1, line 14, and noted that the county commissioners had to approve the ownership of land by the park districts.

**SEN. LAIBLE** questioned **Mr. Morris** if any districts own land. **Mr. Morris** answered that the land belongs to the county. He explained that with **HB 321**, if someone died and left land to a park district, the district could accept and own the land with approval of the county commissioners.

**SEN. ESP** asked what advantage there was to park districts owning land. **REP. FACEY** replied that it gives more flexibility and accountability, especially when it concerns maintenance of the park. **REP. FACEY** felt that the districts maintain their own parks better.

**SEN. GILLAN** wanted to know if the districts could encompass an entire county. **Mr. Morris** answered that they could not. **SEN. GILLAN** asked if the bill allowed the county to own land but also allowed the subset to own as well. **Mr. Morris** stated that was the purpose of the bill.

**Closing by Sponsor:**

**REP. FACEY** responded to **SEN. GILLAN's** question and said that the bill allowed the parks an alternative way to get land. He stated that **HB 321** would give the counties and park districts more flexibility and accountability. He urged the committee to concur in **HB 321**.

**EXECUTIVE ACTION ON HB 103**

*{Tape: 2; Side: A; Approx. Time Counter: 0.5 - 1.5}*

**Motion:** **SEN. LAIBLE** moved that **HB 103** BE CONCURRED IN.

**Discussion:** **SEN. O'NEIL** wanted to know if **Mr. Hansen** was a proponent on the bill. **SEN. GEBHARDT** told him that it was supported by **Mr. Hansen** and **Ms. Bucy**.

**Motion:** **SEN. SHOCKLEY** CALLED THE QUESTION ON **HB 103**.

**Vote:** Motion carried unanimously by voice vote.

**SEN. SHOCKLEY** was assigned to carry **HB 103**.

**EXECUTIVE ACTION ON HB 234**

*{Tape: 2; Side: A; Approx. Time Counter: 1.5 - 3.8}*

**Motion:** **SEN. LAIBLE** moved that **HB 234** BE CONCURRED IN.

**Discussion:** **SEN. WHEAT** said that he had missed the hearing on **HB 234** and asked if **HB 234** had anything to do with a bill that had been passed in the previous session. **SEN. GEBHARDT** explained that the bill that had been passed the previous session needed **HB 234** to amend it. The previous bill had stated that the military papers must be "filed" and not just "recorded." **SEN. GEBHARDT** stated that "filed" meant holding the original paper while "recorded" meant that the Clerk and Recorder's Office could file a copy of the original. **SEN. MANGAN** told **SEN. WHEAT** that there



had been a problem with a World War Two veteran being unable to get his original papers back.

**Motion:** SEN. MANGAN CALLED THE QUESTION ON HB 234.

**Vote:** Motion carried unanimously by voice vote.

SEN. ESP was assigned to carry HB 234.

**EXECUTIVE ACTION ON HB 283**

*{Tape: 2; Side: A; Approx. Time Counter: 3.8 - 7.1}*

**Motion:** SEN. LAIBLE moved that HB 283 BE CONCURRED IN.

**Discussion:** SEN. O'NEIL questioned whether, after the actuarial process had been completed, a community could choose to go back to the percentage method. SEN. GEBHARDT explained the process. SEN. O'NEIL wanted to know what would happen if actuarial amount was higher than percentage formula method. SEN. LAIBLE said that once a municipality chose to switch to the actuarial method, municipalities could not flip back and forth. SEN. MANGAN stated that the bill made sense and that no community should be stuck in a one-size-fits-all method.

**Motion:** SEN. MANGAN CALLED THE QUESTION ON HB 283.

**Vote:** Motion carried 8-3 by voice vote with SEN. GILLAN, SEN. O'NEIL, and SEN. SHOCKLEY voting no.

SEN. WEINBERG was assigned to carry HB 283.

**EXECUTIVE ACTION ON HB 321**

*{Tape: 2; Side: A; Approx. Time Counter: 7.1 - 22.7}*

**Motion:** SEN. GEBHARDT moved that HB 321 BE CONCURRED IN.

**Motion:** SEN. GEBHARDT moved that HB 321 BE AMENDED.

**Discussion:** SEN. GEBHARDT explained that he wanted a conceptual amendment that changed "territory" to "recreational land within a district." SEN. WHEAT wanted to know if there would be a problem with what was within the district. SEN. WHEAT asked Leanne Kurtz what she thought. Ms. Kurtz said she thought the way SEN. GEBHARDT worded it was best. SEN. GILLAN stated that she reviewed

the statutes to best parallel the language. **SEN. GILLAN** pointed out that the Montana Code Annotated stated territory. **SEN. ESP** stated that **SEN. GILLAN** had a good point.

**Motion:** **SEN. GEBHARDT WITHDREW THE MOTION THAT HB 321 BE AMENDED.**

**Discussion:** **SEN. LAIBLE** stated that he did not think they needed the bill. He said that the legislature had already made it easier for the parks commission and counties to acquire land. **SEN. ESP** told him that the smaller districts would take better care of the park and offer local control. **SEN. WHEAT** shared his experience with a park district. He said that the neighborhood district had fixed up and maintained the park and the county would not even mow the grass. **SEN. SHOCKLEY** asked **Mr. Morris** if the bill was designed to address a specific problem. **Mr. Morris** answered that he was not aware of any local problems and that all the bill did was allow park districts to acquire land. **SEN. LAIBLE** asked whether a local park district was different from a parks board. **SEN. GILLAN** explained that the park districts are set up by petition and levies used to maintain the district. **SEN. LAIBLE** wanted to know if it was like an S.I.D. and **SEN. GILLAN** responded that it was and that the districts wanted control of the parks that they maintained. **SEN. MOSS** stated that the bill would facilitate an opportunity for citizens to contribute and donate to their local parks. **SEN. O'NEIL** questioned whether a local park district could charge admission for non-district residents. **SEN. WHEAT** said no, because it was still a public park. **Ms. Kurtz** pointed out that the bill allowed local governments to charge a fee for the maintenance of the district. **SEN. SHOCKLEY** submitted that the bill did not empower the commissions to assess a fee. **SEN. SQUIRES** said that there was no reason or logic for the commission to charge admission. **SEN. GILLAN** stated that it was not unrealistic that a fee may be charged but the districts could not charge a different rate for residents and non-residents. **SEN. ESP** felt the county commissioners could deal with the issue on a local level.

**Motion:** **SEN. MANGAN CALLED THE QUESTION ON HB 321.**

**Vote:** Motion carried 10-1 by voice vote with **SEN. O'NEIL** voting no.

**SEN. GILLAN** was assigned to carry HB 321.

EXECUTIVE ACTION ON HB 371

*{Tape: 2; Side: A; Approx. Time Counter: 22.7 - 23.5}*

Motion/Vote: SEN. MANGAN moved that HB 371 BE CONCURRED IN.  
Motion carried unanimously by voice vote.

SEN. GEBHARDT was assigned to carry HB 371.

EXECUTIVE ACTION ON HB 220

*{Tape: 2; Side: A; Approx. Time Counter: 23.5 - 29.4}*

Motion: SEN. HAWKS moved that HB 220 BE CONCURRED IN.

Motion: SEN. ESP moved that HB 220 BE AMENDED.

Discussion: SEN. ESP wanted to add the clause "if capacity exists" to section 6, line 2. He noted that some small counties and cities did not have the ability to do electronic transfer. SEN. GEBHARDT commented that other parts of the bill would have to be changed as well. He asked Ms. Kurtz if she would like some time to prepare. Ms. Kurtz replied that she would. SEN. HAWKS said that he liked the amendment because it made the bill permissive. SEN. MANGAN wanted to know if they should wait for the amendment to discuss the bill. SEN. GEBHARDT responded that they were discussing any amendments to the bill so they could better direct Ms. Kurtz in drafting a single amendment. SEN. O'NEIL commented that every municipality and county had their money in a bank and every bank had the ability to do electronic transfers. He felt that the capacity for electronic transfers would exist in every situation. SEN. GEBHARDT informed him that some cities and counties do not even have a bank in the area and would be forced to go sign for the electronic transfer in another city or county. SEN. WHEAT discussed the fact that the bill made electronic transfers mandatory for municipalities, counties, and agencies but was permissive for the state. He did not like the idea.

Motion: SEN. ESP WITHDREW THE MOTION THAT HB 220 BE AMENDED.

Motion: SEN. HAWKS WITHDREW THE MOTION THAT HB 220 BE CONCURRED IN.

**EXECUTIVE ACTION ON HB 105**

***{Tape: 2; Side: A; Approx. Time Counter: 29.4 - end of tape}***  
***{Tape: 2; Side: B; Approx. Time Counter: 2.4 - 25.3}***

**Motion:** SEN. WHEAT moved that the committee RECONSIDER THE MOTION to TABLE HB 105.

**Discussion:** SEN. LAIBLE called HB 105 an unfunded mandate and said that it disrupted local control. SEN. WHEAT stated that there were lots of proponents to the bill and just one opponent. He noted that Mr. Morris was the sole opponent and his main concern was HB 105 would be a disincentive to return to work for the deputies. SEN. WHEAT felt that the bill allowed more flexibility in returning to work.

**Vote:** Motion carried 7-4 by roll call vote with SEN. ESP, SEN. GEBHARDT, SEN. LAIBLE, and SEN. O'NEIL voting no.

**Motion:** SEN. WHEAT moved that HB 105 BE CONCURRED IN.

**Discussion:** SEN. HAWKS asked Mr. Morris why he opposed the amendment that changed "may" to "must." Mr. Morris answered that he could not support the bill if it was mandatory. SEN. SHOCKLEY said that if the bill said "may," then there was no reason to even have the bill. Mr. Morris answered that the bill was not needed. SEN. SHOCKLEY questioned SEN. GEBHARDT about a conversation they had about deputies making more money hurt than fit. SEN. GEBHARDT explained that worker's compensation money was tax free and did not require paying into retirement. SEN. GEBHARDT wanted to ensure that the deputies did not get more take-home pay when they were hurt. SEN. LAIBLE stated that they were forcing local communities to take on a huge financial responsibility. He said that the municipalities would have to pay a deputy not to work and then pay to replace the deputy on the street.

**Motion:** SEN. MANGAN moved that HB 105 BE AMENDED.

**Discussion:** SEN. MANGAN explained why he did not like the bill. He felt that Cascade County was trying to force 55 other counties to do what they wanted. SEN. MANGAN wanted to change "must" back to "may." SEN. WHEAT countered that other peace officers had the word "must" in their statutes. He stated that he did not see a rash of sheriff's deputies on worker's compensation. SEN. WHEAT declared that HB 105 was a fairness bill and they needed to bring the statutes for sheriff's deputies in line with the statutes for other peace officers. SEN. WHEAT thought that SEN. MANGAN'S

amendment did not accomplish the goal of the bill. **SEN. SHOCKLEY** said that there was no reason for the bill if it was amended. **SEN. ESP** disagreed with **SEN. SHOCKLEY**, the bill still had purpose as it laid out payment schedules. He maintained that the bill led down a slippery slope and everyone would be wanting the same coverage as sheriff's deputies. **SEN. HAWKS** asked if injured deputies received their benefits and also their pay tax-free. **SEN. GEBHARDT** answered that he would quickly review the bill and then answer. **SEN. SQUIRES** questioned how many days transpired between an injury and payment. **SEN. WHEAT** replied five days. **SEN. SQUIRES** concluded that the injury must be serious, because if it was a minor injury, the deputy would be on light duty. **SEN. SQUIRES** declared that the counties would not be paying more. **SEN. GEBHARDT** noted that **SEN. SQUIRES'** comments were not relevant to the discussion of the amendment. **SEN. GEBHARDT** answered **SEN. HAWKS'** question and said that he was wrong, the deputy did not get more money injured than fit. He stated that the deputy received his net pay but there was no money going into his retirement or income taxes. **SEN. GEBHARDT** commented that this issue was a problem for the Montana Employee Retirement Board. **SEN. MANGAN** closed on his motion, he said that the state cannot afford to take care of everyone. He maintained that the counties could not fund the bill and that the issue should be left to local control. **SEN. MANGAN** commented that he hated to say it but **SEN. ESP** was correct in calling **HB 105** a slippery slope. He predicted that if **HB 105** passed, the detention officers would want the same benefits. He declared that collective bargaining could solve the problem.

**Vote:** Motion carried 7-4 by roll call vote with **SEN. GILLAN**, **SEN. SHOCKLEY**, **SEN. SQUIRES**, and **SEN. WHEAT** voting no.

**Motion/Vote:** **SEN. SHOCKLEY** moved that **HB 105** BE TABLED. Motion carried 9-2 by roll call vote with **SEN. HAWKS** and **SEN. WHEAT** voting no.

**ADJOURNMENT**

Adjournment: 4:53 P.M.

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SEN. JEFF MANGAN, Chairman

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JENNIFER KIRBY, Secretary

JM/jk

Additional Exhibits:

**EXHIBIT ([los57aad0.PDF](#))**